

*In the Matters of David Baldasari and David Remboski,*  
*Telecommunications Systems Analyst 1,*  
*Department of the Treasury*  
DOP Docket Nos. 2004-3541 and 2004-3540  
**(Merit System Board, decided October 6, 2004)**

David Baldasari and David Remboski appeal their non-appointment from Certification No. PS040472 for the title of Telecommunications Systems Analyst 1, Department of the Treasury. These appeals have been consolidated due to common issues.

By way of background, appellants, who had been serving provisionally in the subject title since November 17, 2001, were part of a consolidated appeal (*In the Matter of David Baldasari, et al.*) that was decided by the Merit System Board on November 19, 2003. This group of seven appellants appealed their failing scores for the promotional examination for Telecommunications Systems Analyst 1 (PS8112U), Department of the Treasury. The examination was open to employees serving in 1 of the 15 titles listed on the announcement. Although the examination was open to the titles listed, for scoring purposes, all candidates were required to demonstrate that they met the open competitive requirements for the title. The examination announcement provided that candidates could establish eligibility by completion of their working test period in one of the specified titles. The announcement did not specify that candidates were also required to meet open competitive requirements in order to be found eligible for the examination. On appeal, appellants provided documentation that they performed relevant out-of-title duties. In addition, there were no eligibles for the subject examination. Therefore, the Board determined that it was appropriate to accept appellants' out-of-title work and found that each appellant should receive a base passing score of 70. The Board ordered that the appeals be granted and that the appellants be placed on the eligible list for prospective appointment opportunities. As a result, the PS8112U list was certified on March 2, 2004 with the names of seven eligibles. Four appointments were made effective March 2, 2004. Appellants Baldasari and Remboski were listed as interested, others appointed. It is noted that the eligible list for Telecommunications Systems Analyst 1 (PS8112U) expired on May 30, 2004.

On appeal, Messrs. Baldasari and Remboski state that they applied for the promotional examination for the subject title (PS8112U), Unit Scope U925 within the Office of Information Technology (OIT). The examination was administered in March 2001 and everyone who completed the examination received a Notification of Ineligibility in May 2001. On June 12, 2001, they submitted letters appealing their ineligibility. On August 8, 2001, they were placed under a newly created Unit Scope, U975 (Network Infrastructure), by the Department of Personnel (DOP). On November 17, 2001, DOP Shared Services 3 determined that their positions as Data Processing Systems Programmer 1 were improperly classified. As a result of this determination, their positions were reclassified from Data Processing Systems Programmer 1 to provisional Telecommunications Systems Analyst 1. In November 2003, their appeals

were granted by the Merit System Board. On February 11, 2004, they received a Notification of Eligibility for the examination and on March 9, 2004, they received a Notification of Certification No. PS040472. Appellants argue that four of the eligibles on the Certification were permanently appointed to the subject title, while they were denied permanency on the grounds that they were moved by DOP from Unit Scope U925 to U975 in August 2001. They also argue that they took this examination under Unit Scope U925 which, at the time, included all of the eligibles in the new Unit Scope, U975. In summary, they state that DOP notified them of their provisional appointments, they passed the examination, and they received a Notification of Eligibility and a Notification of Certification from DOP. They argue that they should not be penalized for a DOP decision to move Network Information and Technology, OIT, into a newly created Unit Scope, U975.

## **CONCLUSION**

The unit scope included on a promotional announcement indicates the organizational unit where the position exists. Employees have promotional rights in the organizational unit where they are permanently located. Promotional unit scopes must be reviewed and approved by the Department of Personnel, Division of Selection Services, before they can be used as the official unit scopes of an organization. Upon receipt of the required information for a request to establish a new unit scope or revise an existing unit scope, the Division of Selection Services establishes a cut-off date for the affected provisional appointments. Appointments made on or before that date are not considered part of the reorganization, and resulting promotional announcements proceed under the previously established unit scopes. In addition, the Division of Selection Services establishes the new effective dates for the new unit scopes for promotional announcement purposes.

In the present matter, based on a re-organization within OIT, the Division of Selection Services established a cut-off date for affected provisional appointments of January 1, 2000, and thereby established an effective date for the new unit scope for promotional announcement purposes. Therefore, provisional appointments made prior to the cut-off date were not considered part of the reorganization, and the promotional announcements proceeded under the previously established unit scopes. However, provisional appointments made after the cut-off date were considered part of the new unit scope, and the promotional announcements were required to proceed under the new unit scopes.

Specifically, the Telecommunications Systems Analyst 1 (PS8112U) eligible list was certified against Barbara DiDonato, Barbara Rappaport, Charles Schwartz, and George Sereduk's positions in Unit Scope U975 since their provisional appointment dates were prior to the January 1, 2000 cut-off date for this reorganization. The appellants' appointments were made after January 1, 2000. After this initial certification, the (PS8112U) eligible list could only be used to make appointments in Unit Scope U925. A new examination should be announced for the provisional employees currently serving in the subject title in Unit Scope U975.

Although the Board, in its prior decision, gave the appellants equitable relief and placed them on the eligible list for the subject title, a permanent appointment from the subject list was not a part of the remedy. In this instance, the remedy was based solely on placement on the eligible list. Individuals whose names merely appear on an eligible list do not have a vested right to appointment. *See Nunan v. New Jersey Department of Personnel*, 244 N.J. Super. 494 (App. Div. 1990). Therefore, appellants have failed to support their burden of proof in this matter.

## **ORDER**

Therefore, it is ordered that these appeals be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.